U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

B5

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: FEB 01 2010

SRC 08 063 52087

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Marie Pierson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an economist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner states that the director's decision lacked detail.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the petition on December 17, 2007, with documentation of the petitioner's academic credentials and professional training as an economist, and evidence of his professional activities, such as participation at conferences.

A certificate from the Association of Young Economists (AYE) of Georgia indicated that the petitioner worked for that organization "as a substitute of the chairman of Tbilisi regional organization from 2000 till 2005 and he presented the organization in his competency with the relations of governmental or non-governmental organizations." Another certificate indicated that the petitioner "worked as an **Economic**

Service Head from 2002 to 2003" at Poladconstruction, Ltd., in Rustavi, Georgia. A third certificate indicated that the petitioner "was economical consultant in L.T.D. 'Legoma' from 2001 till 2005."

The petitioner submitted a letter jointly signed by [redacted] and [redacted] The letter reads, in part:

> [The petitioner] was a young man, a student on his first year in Tbilisi Business and Marketing Institute, when he joined the Association of Young Economists of Georgia. He was distinguished with peculiar talents and diligence. From the very beginning he took on himself the responsibility to play an active part in the functioning of the Association. With the immediate initiative and guidance of [the petitioner], many important social projects had been created and implemented in the capital of Georgia. Among the projects that deserve attention are: "Young Economists in the Service of the People" and "The Center of Marketing and Management"; with the help of these projects people could receive free consultations as at the place, also through the telephone line, on Industrial-Economic Sphere, also obtain information on consumer market. It should be mentioned, that this project gained significant importance for the Society and the Economic field.
>
> . . . [H]e took an active part in the work of Anti-Corruption Union of Georgia. . . .
>
> The result of [the petitioner's] creativity and power are a few inventions; For example, we should mention a unique invention of "hydro-engine," which acquires particular significance in the agrarian industry.

The petitioner submitted descriptions of several inventions including a life preserver, a crab trap, and what appears to be a human-powered helicopter.

The petitioner's initial submission gave some idea of what the petitioner has done, but the significance of these accomplishments is not self-evident. Therefore, on October 15, 2008, the director instructed the petitioner to submit evidence to meet the guidelines published in *Matter of New York State Dept. of Transportation.*

In response, the petitioner stated: "I am considering my activity in Economics in three different areas – Management, Legislation and Anti-Corruption methodology." The petitioner stated that, in the 1990s, a wave of immigration from former communist nations "brought . . . corruption and illegal business practices." He stated that he is "familiar with [the] above-mentioned 'methodology' of illegal activity." The petitioner also noted that he has "additional skills like inventor," but did not show the impact his inventions have had, or even that any of them have been commercially manufactured.

The petitioner submitted five new letters. The exact meaning of these letters is not always entirely clear from the translations provided by the petitioner. The translated letter from [redacted] reads, in part:

> He as a hardworking, expert and worthy professional characters human fast inculcated a place among leaders at association. . . . In other years, he actually worked as independent expert on economical draft laws, as different, non-governmental organizations, as legislative or executive organs of country at corresponding worker groups. Especially was important his part in such important draft laws work as: "Changes about entrepreneur activities" in law, civil law, about friendships of owners of flat," changes about defense of rights of consumers" in law.

A joint letter from [redacted] and [redacted] indicates that, because of the petitioner's "more than one fundamental financial recommendations, the company increased sale level of products and, what's more important, on the basis of request of customers System of Technical Service for realized products was established, what became a source of additional financial income for the company."

[redacted]., stated:

> [The petitioner] was working at Legoma Ltd for the period of 2001-2005 years.
>
> Under his immediate leadership the enterprise could obtain the transited certificate of passenger's transport. Later with the business plan of respected [the petitioner] we took part and won in capital, in the called tender on the transit of passengers transport, on the internal civil and intertown route cars, which brought the important financial success to organization.

A letter jointly signed by five members of "Independent Expert group" reads, in part:

> [The petitioner] gained experience and great knowledge in the field of business and marketing by wonderful talent and hard-working features. He was developed as an expert in post Soviet countries in the branch of marketing research in consumer market and thereof [the petitioner] may, as the expert in the economic field for any international organization-offices, consider as favourite person.
>
> [The petitioner] distinguishes himself by especial professional skills. . . .
>
> He has higher authority over the society around him. He was a member of expert group from 2000 till 2005. He is among one of particular experts in Georgia and his professional development has a great significance for the future of our country.

[redacted] of the Georgia Anti-Corruption Union stated:

> [The petitioner] jointed the actions against corruption, contrabands and falsification. Against such vicious phenomenon [the petitioner] worked out the project "Shock Therapy," which should be considered as the main documentation in this field.
>
> The mentioned project make provisions for putting the corresponding mark of quality on the production ready for realization. Particularly, the mark of quality should serve as the object of state standards and for aims of control the taxpayer's incomes, which should be put on each production ready for realization.
>
> In case of any appearance of production without the corresponding mark of quality should applied quite serious financial sanctions for the distributors for the first time, but repeatedly legal liability becomes tougher.

The director denied the petition on February 10, 2009, stating that the petitioner had failed to show how he stands apart from other economists. On appeal, the petitioner protests that the director's "decision is non-detailed and just plain account of regulation," and that the director "denied my assertions without any explanation."

While the director's decision is not rich with detail, it is equally true that the petitioner did not present a strongly coherent argument in favor of granting the waiver he seeks. The petitioner cannot reasonably expect a detailed rebuttal when there are no detailed claims to rebut.

The petitioner has submitted evidence that he is a qualified and experienced economist (and apparently an inventor as well), but being a qualified economist (or inventor) is not an automatic basis for a national interest waiver. An alien member of the professions holding an advanced degree must, normally, have a job offer including an approved labor certification. The petitioner must set himself apart from others in his field in order to show that he deserves an exemption from this standard legal requirement. It cannot and does not suffice for the petitioner simply to lay out his credentials and state that a waiver is in order.

Also, the petitioner has relied heavily on letters from witnesses who appear to have close ties to him. The record contains no independent, verifiable documentary evidence to support their claims of fact.

The petitioner has not claimed, let alone demonstrated, any expertise in the United States economy. He has not explained how his experience and knowledge make him potentially so valuable to the United States that it would be in the national interest to forgo the normal channels by which alien professionals with advanced degrees normally immigrate to the United States. His anti-corruption work is meritorious, but he has not shown how his anti-corruption work in the former Soviet republic of Georgia will translate to the United States. His work as an inventor does not appear to relate directly to his intended future work as an economist. Even if it did, the petitioner has not shown that any of his inventions have progressed beyond written descriptions, nor has he demonstrated that these inventions serve the national interest.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This decision is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.